

Defendants Have Right to Inspect Illegal 'Bugging,' Justices Rule

The Supreme Court ruled yesterday that criminal defendants, including those accused of espionage, have a right to inspect records of illegally "bugged" conversations to find out whether the prosecution's case has been tainted by the invasion of their rights by Federal agents.

Nothing short of this full disclosure will ensure that the Government is not profiting from its own illegal conduct by using unlawful wiretaps and planted microphones to build its case against the accused, the Court said in a series of controversial decisions.

The decisions, handed down by a closely divided Court, are certain to have a profound impact on the way the Government investigates and prosecutes its most sensitive "national security" cases as well as some of its most celebrated racketeering cases.

Obtaining Warrants

Its direct impact will be heavier on past or pending cases rather than future ones, since the disclosure requirement is triggered only by illegal electronic surveillance. In future cases, Federal agents will not have much trouble under the 1968 Crime Control Act in getting judicial warrants making their eavesdropping legal.

However, even in future national security cases the Government may be reluctant to bring prosecutions against persons who have been bugged, since it might have to disclose the existence of electronic surveillance equipment—including legally installed equipment—and other intelli-

gence techniques to a defendant who could pass them along to a foreign power.

In these cases the Federal Government would be forced to forego criminal prosecutions while continuing to use all its intelligence resources to keep tabs on suspected foreign agents.

The Court sent back for full lower court hearings the case of Igor Ivanov, a former chauffeur for a Soviet trade agency, and John W. Butenko, an American engineer, both convicted in 1963 of conspiring to spy for Russia. Ivanov is trying to overturn a 30-year prison sentence and Butenko is attacking a 20-year term.

Extortion Case

Also sent back for hearings was the case of Willie L. Alderman and Felix (Milwaukee Phil) Alderisio, two racket figures convicted of extorting money from a Las Vegas businessman.

In the wake of yesterday's action new hearings are expected to be ordered for such convicted persons as Teamster leader James R. Hoffa, who is serving an 8-year prison term for jury tampering in Tennessee and has also been convicted of bribery in Chicago.

Neither Hoffa nor any of the other defendants who accuse the Government of illegal eavesdropping is expected to win release from jail while the hearings are held. They stand to win new trials, however, if the courts find that prosecution evidence was obtained from illegal eavesdrop "leads" rather than by independent, legal methods.

Solicitor General Erwin N. Griswold argued vigorously against the decision of the Court reached yesterday, saying it would force the Government to drop some of its most serious criminal cases rather than let defense counsel smoke out important evidence-gathering secrets.

He argued the Justices to rule that trial judges should initially screen eavesdropping

records to see if they contain material "arguably relevant" to the defense.

The Court, however, agreed with most of the argument of Washington lawyer Edward Bennett Williams, who said trial judges will never know enough about a case to detect that a piece of evidence or innocent-looking information was obtained from an illegal listening device.

The Court split many ways on several issues. Justice Byron R. White's opinion for the Court got the full concurrence only of Chief Justice Earl Warren and Justice William J. Brennan Jr., with Justice William O. Douglas agreeing with most of the rulings and Justice Potter Stewart joining in the key 5-to-3 decision to require full disclosure with no exceptions for "national security" cases.

Justice Hugo L. Black, who has argued for three years that eavesdropping is not covered by the Fourth Amendment's "search and seizure" provisions, dissented from the entire ruling. Justice Thurgood Marshall, who as Solicitor General made the first disclosures of illegal bugging to the Court, disqualified himself.